

Exhibit A



Signed and Filed: September 18, 2024

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
) Reorganized Debtors
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**MEMORANDUM DECISION ON THIRTY-THIRD AND THIRTY-FOURTH
SECURITIES OMNIBUS CLAIMS OBJECTIONS**

I. Introduction

The court has had under submission PG&E's Thirty-Third Securities Omnibus Claims Objection to PERA and Securities Act Plaintiffs' TAC, Including to Certain Claimants That Adopted the TAC ("33rd Omnibus Objection") (Dkt. 14200) and PG&E's Thirty-Fourth Securities Claims Omnibus Objection to Claims Adopting

1 RKS Amendment ("34th Omnibus Objection" and together, the
2 "Omnibus Objections"). (Dkt. 14203).¹ Rule 3007(d)² permits the
3 filing of omnibus objections.³

4 The court has considered the Omnibus Objections; Lead
5 Plaintiff PERA and The Securities Act Plaintiffs' Response and
6 Opposition to the Reorganized Debtors' Thirty-Third Securities
7 Omnibus Claims Objection (Dkt. 14342); the RKS Claimants'
8 Opposition to Reorganized Debtors' Thirty-Fourth Securities
9 Claims Omnibus Objection to Claims Adopting the RKS Amendment
10 (Dkt. 14353); the Omnibus Reply in Support of Reorganized
11 Debtors' Thirty-Third and Thirty-Fourth Securities Claims
12 Omnibus Objections ("Reply") (Dkt. 14453); the Further Reply in
13 Support of Reorganized Debtors' Thirty-Fourth Securities Claims
14 Omnibus Objection to Claims Adopting RKS Amendment (Dkt. 14454);
15 the Third Amended Consolidated Class Action Complaint for
16 Violation of the Federal Securities Laws (filed in USDC action
17 3:18-cv-03509-EJD); the Amended Statement of Claim on Behalf of
18
19

20 ¹ Defined terms used throughout this Memorandum Decision are
21 found in the Glossary of Defined Terms (with some entries
22 deleted) that accompanied the 33rd Omnibus Objections and are
set forth following this discussion.

23 ² Unless otherwise indicated, Rule references are to the Federal
24 Rules of Bankruptcy Procedure, Rules 1001-9037 and Code
25 references are to the United States Bankruptcy Code, 11 U.S.C.
§ 101 et. seq. B.L.R. refers to the Bankruptcy Local Rules for
26 this district.

27 ³ Rule 3007(c)(6) limits omnibus objections to no more than 100
28 claims. Several hundred claims are the subject of the 34th
Omnibus Objection and no party objected to that joinder. The
court considers that minor procedural point waived.

1 the RKS Claimants (Dkt. 14061-2); and the numerous filings
2 related to the foregoing submissions.

3 For the reasons that follow, the Omnibus Objections are
4 OVERRULED in part and SUSTAINED in part. While the court does
5 not believe it will be necessary for PERA or the RKS Claimants
6 to seek to amend their respective submissions, given the breadth
7 of what survives the Omnibus Objections, the rules permit them
8 to do so. If either does amend, the court will not consider any
9 renewed attempts by PG&E to dismiss at this stage. Any
10 amendments to the TAC or the RKS Amendments must be filed by
11 **October 8, 2024**. These matters must proceed with the pleadings
12 as modified by this ruling and any further amendments so
13 discovery, more typical pre-trial proceedings, mediation, and
14 then trial as necessary.

15 **II. Procedural Setting**

16 **A. Background**

17 The PSLRA was enacted by Congress nearly thirty years ago
18 to protect defendants from unfounded class actions. As PG&E
19 stated:

20 Congress recognized that “[p]rivate securities fraud
21 actions, however, if not adequately contained, can
22 be employed abusively to impose substantial costs on
23 companies and individuals whose conduct conforms to
24 the law.” *Tellabs, Inc. v. Makor Issues & Rights,*
25 *Ltd.*, 551 U.S. 308, 313 (2007). Therefore,
26 “[s]etting a uniform pleading standard for § 10(b)
27 actions was among Congress’ objectives when it
28 enacted the PSLRA.” *Id.* at 320. Congress ensured
that “[a]s a check against abusive litigation by
private parties,” the PSLRA includes “[e]xacting
pleading requirements.” *Id.* at 313.

33rd Omnibus Objection at 25.

1 PG&E is clear that the PSLRA is a shield to protect law
2 abiding companies from frivolous lawsuits from investors. It is
3 not a sword for bankruptcy debtors to hinder claimants.

4 The original TAC was filed by PERA and other plaintiffs
5 before the bankruptcy filing. For all practical purposes the
6 bankruptcy removed PG&E from the TAC. Any attendant procedural
7 benefits of the PSLRA might remain in the District Court Action.

8 On May 19, 2019, PG&E filed the Motion to Set Last Day to
9 File Proofs of Claim (Dkt. 1784). That motion sought to set a
10 bar date for filing proofs of claim by Wildfire Claimants;
11 Wildfire Subrogation Claimants; Customers, and governmental
12 units. Proofs of Claim were not required to be filed by holders
13 of equity security interests⁴ or Debt Claims⁵ (without any carve-
14 out for claims relating to the purchase or sale of such a Debt
15 Claim). The motion did not mention any claim for securities
16 fraud as later alleged in the TAC or the RKS Amendment.

17 The court initially set a claims bar date of October 21,
18 2019 (Dkt. 2806). Proofs of claim on behalf of the class
19 described in the TAC were duly filed October 21, 2019 (Proof of
20 Claim Nos. 72193, 72273). On December 19, 2019, PERA filed a
21

22 ⁴ Sec. V. a. (o)(7) stated: ". . . *provided, however, that if any*
23 *such holder asserts a claim (as opposed to an ownership*
24 *interest) against the Debtors (including a claim relating to an*
25 *equity interest or the purchase or sale of such equity*
interest), a Standard Proof of Claim must be filed on or before
the Bar Date." (Emphasis in original).

26 ⁵ Sec. V. a. (o)(7) defines a Debt Claim as one that "is limited
27 exclusively to the repayment of principal, interest, and other
28 fees and expenses under any agreements governing any prepetition
unsecured revolving credit loan, term loan, notes, bonds,
debentures, or other debt securities, in each case, issued by or
on behalf of the Debtors . . ."

1 Motion to Apply Bankruptcy Rule 7023 to Class Proof of Claim
2 (Dkt. 5042), which PG&E opposed (Dkt. 5369). PG&E insisted that
3 the proof of claim process was superior to PERA's proposal.
4 After further briefing, the court sided with PG&E, and instead
5 of proceeding with a Rule 7023 class action as requested by
6 PERA, set a new bar date of April 16, 2020, for what the court's
7 Order defined as Securities Claimants, and broadened the types
8 of claims that could be filed by the extended bar date (Dkt.
9 5943).⁶

10 In the rounds of briefing and supplemental briefing, the
11 only time the PSLRA was even mentioned was by Mr. Etkin, counsel
12 for PERA, at the hearing on PERA's Motion to Apply Bankruptcy
13 Rule 7023 to Class Proof of Claim. Mr. Etkin's mention of the
14 PSLRA stay indicates that he believed the PSLRA's stay on
15 discovery applied during the pendency of a motion to dismiss a
16 class action lawsuit arising under the statute. (Dkt. 5562, p.
17 92). While PERA may have believed the PSLRA to apply to its
18 proposed class, PG&E at no point suggested the heightened
19 pleading standards of the PSLRA would apply to its proposed
20

21 ⁶ Exhibit B to that order included the following prominent
22 notice:

23 **IMPORTANT COURT ORDERED NOTICE**

24 **YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY HAVE PURCHASED OR**
25 **ACQUIRED SECURITIES OF PG&E CORPORATION, PACIFIC GAS AND ELECTRIC**
26 **COMPANY, OR BOTH, FROM APRIL 29, 2015 THROUGH NOVEMBER 15, 2018**
27 **(INCLUSIVE) AND MAY BE ENTITLED TO A RECOVERY IN THE**
28 **PG&E CHAPTER 11 CASES.**

YOU HAVE BEEN GIVEN ADDITIONAL TIME BY THE BANKRUPTCY COURT TO
FILE A CLAIM IN THE PG&E CHAPTER 11 CASES FOR RESCISSION OR DAMAGES
BASED UPON YOUR PURCHASE OR ACQUISITION OF SUCH SECURITIES. IF YOU
WISH TO FILE SUCH A CLAIM, PLEASE FOLLOW THE INSTRUCTIONS BELOW.

1 claims objection process that, again, was strictly in opposition
2 to a proposed class process.

3 An amended Plan was confirmed on June 20, 2020 (Dkt. 8053).
4 On September 29, 2020, PERA filed a second motion to apply Rule
5 7023 and certify a class of the thousands of securities claims
6 (Dkt. 9152). The court again sided with PG&E and denied that
7 motion as well (Dkt. 10020), and instead entered an Order
8 Approving Securities ADR and Related Procedures for Resolving
9 Subordinated Securities Claim (Dkt. 10015). That order approved
10 detailed Securities Claim Procedures, along with Securities
11 Omnibus Objection Procedures. That order also provided that to
12 the extent there were unresolved objections after settlement
13 negotiations and mediation, "merits-based objections . . . will
14 be made pursuant to section 502 of the Bankruptcy Code and
15 consistent with Rule 3007 of the Federal Rules of Bankruptcy
16 Procedure." (Dkt. 10015, Ex. A at 3). The only reference to the
17 PSLRA was in a footnote.⁷

18 In short, PG&E designed and supported the procedures that
19 the court implemented over the objections of PERA. Yet now,
20 PG&E seeks to use the PSLRA as a shield notwithstanding the fact
21 that PG&E chose bankruptcy and the now well-established
22 Securities Claim Procedures. PG&E must continue with rather
23 than frustrate these procedures.

24 On July 28, 2023, the court entered the Order Authorizing
25 Amendment and Objection Procedures for Securities Claims (Dkt.

26 ⁷ "The Reorganized Debtors believe that this information is
27 necessary to calculate potential damages (and therefore
28 potential settlement amounts) under 15 U.S.C. § 78u-4(e) of the
PSLRA" (Dkt. 10015, Ex. A-1 at fn.1)).

1 13934) (the "Objections Procedures Order"). The Objections
2 Procedures Order was agreed to by RKS (but not PERA). The
3 Objections Procedures Order states in Para. 10(b) of Exhibit A:
4 "While the motions to dismiss set forth in the above paragraph
5 are pending, the parties will agree to meet and confer on
6 certain procedures for coordination of discovery should such
7 discovery be necessary after the motions to dismiss are decided
8 by the Court". Discovery was not to take place until motions to
9 dismiss the claims were decided.

10 In the summer of 2023, there was no focus by the court or
11 the parties as to whether the PSLRA even applied. As the
12 situation has progressed, it is evident that PG&E was of the
13 view that the PSLRA should apply and therefore a stay of
14 discovery was appropriate.

15 Later the court issued the *Order Denying Requests for*
16 *Limited Discovery* (Dkt. 14292) on January 25, 2024 and included
17 its explanation about timing discovery after the sufficiency
18 objections were ruled upon.⁸

19 The opposition by PERA and RKS in their subsequent filings
20 demonstrate that the underlying premise of the applicability of
21 the PSLRA must be reconsidered. Indeed, the court never
22 formally held that it did apply. It is particularly
23 inappropriate to use in opposition to claims that have been
24

25 ⁸ In the oral ruling, the court stated: "PERA . . . and RKS,
26 their claims will survive the sufficiency on their own face
27 (sic)), on their strength of themselves, not on the weakness of
28 what they believe exists in PG&E's defenses. Those will be
tested after the sufficiency objections are favorably disposed
of in favor of the claimants and will not be at all relevant if
the sufficiency objections are sustained." Dkt. 14293, at 50:17-
23.

1 filed against debtors in bankruptcy court, and not in opposition
2 to actions filed by class plaintiffs against it, as contemplated
3 by the PSLRA.

4 The court cannot and will not depart from the traditional
5 procedure of deferring any disputed fact questions until after
6 completion of appropriate discovery. The PSLRA is unfamiliar
7 territory for bankruptcy courts to navigate and this court will
8 not venture there.

9 **B. Bankruptcy Court Objections vs PSLRA**

10 This case appears to be one of first impression, namely,
11 where the Bankruptcy Court has been called upon to alter the
12 Claims Procedures Order mid-stream and invoke the PSLRA.

13 There are very few reported cases of bankruptcy courts
14 dealing head-on with the PSLRA. In its Reply, PG&E cites only
15 *Mishkin v. Ageloff*, 220 B.R. 784 (S.D.N.Y. 1998) and *In re*
16 *Dozier Fin., Inc.*, 2018 WL 6985219 (Bankr. D.S.C. Apr. 20,
17 2018). PG&E also cites in a footnote two other cases that
18 appear to have the same intersection and were cited by RKS as
19 well: *In re Tronox Inc.*, 2010 WL 1849394 (Bankr. S.D.N.Y. May
20 6, 2010) and *In re Recoton Corp.*, 307 B.R. 751 (Bankr. S.D.N.Y.
21 2004). None of these cases reflect the situation at hand.

22 In *Mishkin*, an SIPC trustee filed an adversary proceeding
23 in the Bankruptcy Court and sought relief from the PSLRA's stay
24 of discovery against the defendant under 15 U.S.C. § 78u-
25 4(b)(3)(B). *Mishkin*, 220 B.R. at 789. The Bankruptcy Court
26 granted such a stay, but the District Court reversed, pointing
27 out that the trustee had not met his burden of showing undue
28 prejudice as a result of that stay. *Id.* Unrelated to the

1 merits, but not to go unnoticed, the District Court withdrew the
2 reference of that adversary proceeding, thus apparently
3 terminating involvement of the Bankruptcy Court. *Id.* at 799-
4 801.

5 In *Recoton*, a creditors' committee sought to proceed under
6 Rule 2004. *Recoton*, 307 B.R. at 751. Respondents argued that
7 the PSLRA and discovery under the Securities Litigation Uniform
8 of Standards Act of 1998 prohibited such discovery. *Id.* The
9 Bankruptcy Court overruled the objections, in part because no
10 action had even been commenced against the defendant. *Id.* at
11 757-58.

12 In *Tronox*, the same bankruptcy judge who decided *Recoton* a
13 few years earlier dealt with an attempt by plaintiffs to extend
14 the time for filing a class proof of claim. *Tronox*, 2010 WL
15 1849394. The ruling that the PSLRA did not regulate the filing
16 of class claims in Bankruptcy Court is again, of no relevance to
17 the present dispute.

18 Finally, in *Dozier*, the Bankruptcy Court contended with the
19 defendants' argument that a complaint did not comply with the
20 heightened standards of the PSLRA. *Dozier*, 2018 WL 6985219. In
21 overruling that objection, the court indicated its satisfaction
22 that the plaintiff had adequately alleged securities violations
23 and found that the defendants' attack on the merits of those
24 claims were not appropriate at the Rule 7012(b)(6) stage.
25 *Dozier*, 2018 WL 6985219 at *10.

26 **C. Traditional Claims Objections Procedures**

27 Under Section 502(a), "A claim or interest, proof of which
28 is filed under Section 501 . . . is deemed allowed, unless a

1 party in interest . . . objects." Thus, all proofs of claim
2 included within the TAC and RKS Amendment were deemed allowed
3 until the Omnibus Objections were filed. After that, the
4 provisions of BLR 3007-1(b) come into play. Under that Local
5 Rule, when a factual dispute is involved, the initial hearing on
6 the objection shall be deemed a status conference. Where an
7 objection involves only a matter of law, the matter may be
8 argued and decided at the initial hearing.

9 The TAC contains six claims for relief, four of which are
10 directed at PG&E. In its entirety, it includes 706 numbered
11 paragraphs spanning 216 pages. The RKS Amendment covers 195
12 pages of text and 673 numbered paragraphs. It consists of five
13 claims for relief, all against PG&E.

14 Albeit with differing pleading standards, the Omnibus
15 Objections are taken as motions to dismiss the TAC and the RKS
16 Amendment. Generally, the standard for a motion to dismiss a
17 pleading under Rule 7012(b)(6), which incorporates Fed. R. Civ.
18 P. ("FRCP") 12(b)(6), is that a plaintiff must plead "enough
19 facts to state a claim to relief that is plausible on its face."
20 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A
21 claim has facial plausibility when the plaintiff pleads factual
22 content that allows the court to draw the reasonable inference
23 that the defendant is liable for the misconduct alleged."
24 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "The plausibility
25 standard is not akin to a probability requirement, but it asks
26 for more than a sheer possibility that a defendant has acted
27 unlawfully." *Id.* This regime applies to Securities Act
28 violations complained of here.

1 The standards for overcoming a motion to dismiss under the
2 Exchange Act are higher, incorporating FRCP 12(b)(6) and 9(b)
3 because of the fraud allegations, requiring "exacting pleading
4 standards" and more particularity as to the claims plead than
5 the standard of FRCP 12(b)(6) alone. See *Tellabs, Inc. v. Makor*
6 *Issues & Rights, Ltd.*, 551 U.S. 308, 313 (2007). No matter the
7 standard, all facts asserted in the claims must be assumed to be
8 true, and the court must determine whether those facts amount to
9 a plausible claim for relief.

10 In the context of this matter, at PG&E's urging, the court
11 stayed the discovery process when it allowed a dual track of
12 potential class certification and claims objections to move
13 forward (Dkt. 14292). That means all that is in front of this
14 court are the claims in the TAC and RKS amendments, subject to
15 the Securities Act or Exchange Act plausibility standards, and
16 not the more rigorous ones of the PSLRA set against conflicting
17 facts as alleged by PG&E.

18 Thus, in this context, when either pleading standard leads
19 to conflicting evidence, that evidence cannot be resolved at the
20 motion/objection stage. It is of note that to rebut the
21 presumption of truth in the pleading does not create a
22 presumption of falsity; rather, it underscores the fact that
23 material fact questions must be determined after discovery,
24 summary judgment and perhaps trial.

25 With that in mind, the court rejects the notion that the
26 Omnibus Objections (as for alleged Exchange Act violations) must
27 meet the higher pleading standards of the PSLRA, although they
28 must meet the plausibility standards of FRCP 12(b)(6). Stated

otherwise, the claims made in the TAC and RKS Amendment must be plausible, meaning that they must be sufficient to pass muster of the threshold requirements of the applicable provisions of the Exchange Act and the Securities Act as discussed below.

III. Summary of Claims

As noted above, PERA and RKS assert two different types of causes of action asserted under two different statutory schemes:

First are the Exchange Act claims. These claims originate under the Securities Exchange Act of 1934 and are based on equity interests purchased by Securities Fraud claimants. The thrust of the Exchange Act claims are that PG&E's false statements regarding safety practices during the Alleged Relevant Period led to artificially inflated prices of shares purchased by the Exchange Act Claimants. Once those false statements and concealed safety failures came to light in the wake of the various wildfires eventually found by California's Department of Forestry and Fire Protection ("Cal Fire") to be caused by PG&E, the prices of those shares sharply dropped several times and resulted in harm to the claimants.

Next are the Securities Act claims, asserted by purchasers of debt securities purchased during the Notes and Exchange Offerings. These claims allege that the disclosures related to those Offerings materially misled investors as to the risk of wildfire, that risk's impact on PG&E's business, the sufficiency PG&E's actions undertaken to prevent wildfires, and PG&E's liability with respect to potential wildfires. Liability under this law does not require scienter, nor in some cases, reliance.

1 It is also restricted by a shorter statute of limitations than
2 the Exchange Act.

3 These claims were either paid or left in place under the
4 Confirmed Plan, but as with the Exchange Act claims, the
5 individual damage amounts remain undetermined.

6 **IV. Merits - Specific Legal Challenges**

7 **A. Statute of Limitations on Section 11 Claims Based on the** 8 **Notes and Exchange Offerings**

9 Section 11 of the Securities Act imposes civil liabilities
10 on those involved in the making of a false registration
11 statement. 15 U.S.C. § 77k. Claims to enforce this section must
12 be brought "within one year after the discovery of the untrue
13 statement or the omission, or after such discovery should have
14 been made by the exercise of reasonable diligence." Otherwise,
15 the claims are time barred. 15 U.S.C. § 77m.⁹

16 This means that the Securities Act Plaintiffs' and RKS
17 Claimants' Section 11 claims could be time-barred, because the
18 TAC¹⁰ itself states that the misrepresentations were beginning to
19 become clear in 2017 after the North Bay Fires. PG&E points to
20 Paragraph 321 of the TAC, which discusses artificially inflated
21 stock price levels that reached a high on September 11, 2017,
22

23 ⁹ Cases construing securities fraud statute of limitations
24 defense deal more often with the two-year period for Exchange
25 Act claims, rather than the one-year period for Securities Act
claims, but the analysis is the same.

26 ¹⁰ Because Debtors assert the RKS Claimants have plead the same
27 facts as in the TAC, and because Debtors' argument in the 33rd
28 Omnibus Objection regarding the statute of limitations are the
same in the 34th Omnibus Objection, the court refers only to the
TAC and not the RKS Amendment for efficiency.

1 "a month before **the truth started to emerge** on October 12, 2017"
2 (emphasis added). PG&E contends that the one-year statute of
3 limitations set forth in § 77m began to run in October 2017 (or
4 at the latest, December 2017).

5 The statute says what is critical is not when the truth
6 starts to emerge, but when that truth can or should be known
7 after reasonable diligence, and what that reasonable diligence
8 should have been is a fact-specific inquiry. That is sufficient
9 reason to preserve these claims here at the pleading stage.

10 In *In re Bare Escentuals, Inc. Securities Litig.*, 745 F.
11 Supp. 2d 1052 (N.D. Cal. 2010), the court declined to dismiss at
12 the initial pleading stage of similar allegations as those here:

13 Here, in light of the various purported disclosures
14 and relevant dates that plaintiffs allege, stemming
15 throughout the class period – the last of which
16 allegedly occurred in the October 30, 2008,
17 earnings release statement – the court finds that
18 resolution of the limitations issue is not
19 appropriate at the pleading stage, but must be
20 determined once an evidentiary record has been
21 developed. Moreover, while defendants are correct
22 that plaintiffs allege multiple disclosures
23 beginning as early as June 5, 2007, regarding the
24 exposure of defendants' fraud, plaintiffs are also
25 entitled to the reasonable inference that it is the
26 course of all disclosures collectively that
27 ultimately placed plaintiffs on notice of the need
28 to investigate for fraud – i.e., that it was no
single disclosure that was dispositive, but rather
all the disclosures collectively.

24 *Bare Escentuals*, 745 F. Supp. 2d at 1081. PG&E downplays this
25 case as a single district court decision,¹¹ but cannot avoid the

27 ¹¹ *Bare Escentuals* is hardly a maverick case as Debtors suggest,
28 as it cites several other circuit and district court decisions,
as did RKS (Dkt. 14353) for the same proposition: the statute
of limitations inquiry is fact intensive.

1 more recent Ninth Circuit decision, *York County, et al. v. HP,*
2 *Inc, et al.*, 65 F.4th 459 (9th Cir. 2023). *York County* was
3 decided under a different federal statute of limitation but
4 stands for the same proposition. There, the Ninth Circuit dealt
5 with disposition of a motion to dismiss and the applicable
6 discovery rule. It concluded that the defendant had not
7 demonstrated that the plaintiff could have pleaded an adequate
8 complaint prior to the critical date. It also discussed at
9 length *Merck & Co, Inc. v. Reynolds*, 559 U.S. 633 (2010) and the
10 tension between inquiry notice and statutory language that
11 states accrual of a claim begins after discovery.

12 Here the minimal facts alleged in 2017 do not convince the
13 court that PERA and RKS could have pleaded adequate facts prior
14 to one year before the petition date.

15 PG&E's statute of limitation defense fails at this stage.
16 For this reason, there is no need to speculate on the issues
17 debated by PG&E and RKS about the fact that Securities Act
18 Plaintiffs did file suit against certain PG&E officers,
19 directors, and underwriters for Section 11 violations on
20 February 22, 2019,¹² which was later incorporated into the TAC on
21 May 28, 2019. Neither side mentioned that the operative law
22 here is that Debtors filed Chapter 11 on January 29, 2019,
23 triggering Section 108(a) and tolling the statute of limitations
24 under the securities laws for claims against them.

27 ¹² U.S.D.C. No. 19-0994, *York County, etc. v. Rambo*, was filed on
28 February 22, 2019. It did not name Debtors as defendants as the
bankruptcy case was pending then.

1 PG&E also points out that by this same time - when the
2 truth started to emerge - the TAC alleges the market became
3 aware of the truth that results in damages under the Exchange
4 Act and that the claimants cannot have it both ways. While
5 true, the Securities Act Plaintiffs, PERA and the RKS Claims are
6 free to plead in the alternative, and their Securities Act
7 claims do not fail because of what is alleged in the Exchange
8 Act claims.

9 **B. Prior Release of Certain Bond Issues**

10 PG&E argues that Plan Sections 1.180 (defining "Releasing
11 Parties" as "holders of Utility Senior Note Claims"); 1.245
12 (defining "Utility Senior Note Claims"); and 10.9(b) (listing
13 exceptions to Releasing Parties); along with Para. 56 of the
14 Confirmation Order extends to some of the affected claimants,
15 meaning that those claims have long been released and thus must
16 be dismissed.

17 PERA rightly notes that these classifications relate to
18 classes of claims for voting purposes and general plan
19 treatment. PERA also rightly notes that prosecution of the
20 Securities Claims falls within the release exception of Section
21 10.9(b) in the Plan, excepting from release "the rights that
22 remain in effect from and after the Effective Date to enforce
23 the Plan and the Plan Documents[.]" Here, those holding
24 Securities Claims are appropriately enforcing their rights under
25 the Plan by seeking to have their Securities Claims allowed and
26 to receive a distribution in accordance with the Plan's terms.
27 In this instance, it does appear that PG&E is conflating the
28 Plan's satisfaction of Note Claims with Securities Claims.

1 More critically, Section 1.180 of the Plan qualifies
2 "Releasing Parties" with . . . ***in their capacities as such***
3 (emphasis added). RKS Claimants (and PERA and the Securities
4 Act Plaintiffs) are subordinated by Section 510(b) of the Code
5 and the Plan Sections listed in Exhibit A attached to this
6 Memorandum Decision. These parties are claiming harm against
7 PG&E in the capacities as holders of securities fraud claims,
8 and as the holders of Utility Subordinated Debt Claims, which
9 were not part of any release of under Section 10.9(b) of the
10 Plan.

11 Quite apart from any wordsmithing about plan terms and
12 their definitions, the court notes the detailed notice
13 provisions quoted in footnote 6 that went to thousands of
14 claimants and produced over 8,000 fraud claims. There can be no
15 doubt the Plan informed these claimants they were being provided
16 for, nor can there be any reason to believe the court would
17 later take back that statement and disallow those thousands of
18 claims by reading the Plan Definitions as PG&E wishes.¹³

21 ¹³ Note also what the Plan said about treatment of these claims:

22 Plan Sec. 4.12 ("[E]ach holder of an Allowed HoldCo
23 Subordinated Debt Claim shall receive Cash in an
24 amount equal to such holder's Allowed HoldCo
25 Subordinated Debt Claim."): Sec. 4.14 ("[E]ach holder
26 of an Allowed HoldCo Rescission or Damage Claim shall
27 receive a number of shares of New HoldCo Common Stock
28 equal to such holder's HoldCo Rescission or Damage
Utility Claim Share."). Sec. 4.32 ("[E]ach holder of an
Allowed Utility Subordinated Debt Claim shall receive
Cash in an amount equal to such holder's Allowed
Utility Subordinated Debt Claim."

1 Note, also, in excerpts of the Plan attached as Exhibit A,
2 that set forth the provisions of the Plan that treat the Section
3 510(b) subordinated claims and interests.

4 The PG&E's Release defense fails.

5 **V. Merits - Critical Components of Exchange Act Claims**

6 Both the TAC and RKS Amendment assert claims under Section
7 10(b) of the Exchange Act and SEC Rule 10-5(b) promulgated
8 thereunder. The relevant elements of these claims are enumerated
9 below.

10 Both the TAC and RKS Amendment also assert claims for
11 control person liability, a violation of Section 20(a) of the
12 Exchange Act. Section 20(a) "imposes liability on a person who
13 is in control of the person who is directly responsible for a
14 securities fraud violation." *In re Alphabet*, 1 F.4th at 701.
15 Any person who caused the direction or the management and
16 policies of the securities violator, therefore, is jointly
17 liable for the actions of the violator itself. *Id.* This
18 liability is derivative, such that there is no individual
19 liability where there is no primary violation of the securities
20 law. *In re Genius Brands*, 97 F.4th at 1180. Because the
21 liability is derivative, the court incorporates the claim by
22 reference in its discussion of misstatement liability below.

23 Only the RKS Amendment asserts scheme liability against
24 Debtors. Scheme liability is the term used for violations of
25 Rule 10b-5(a) and (c), which makes it unlawful for a defendant
26 to "employ any device, scheme or artifice to defraud" or "engage
27 in any act, practice, or course of business which operates or
28 would operate as a fraud or deceit upon any person[.]" 17 CFR §

1 240.10b-5. Under recent Supreme Court and Ninth Circuit
2 precedent, the same misstatements or omissions which may give
3 rise to liability under Rule 10b-5(b) may also be used to prove
4 a scheme to defraud under Rule 10b-5(a) and (c). *Lorenzo v.*
5 *SEC*, 139 S. Ct. 1094, 1100 (2019) ("dissemination of false or
6 misleading statements with intent to defraud can fall within the
7 scope of subsections (a) and (c) of Rule 10b-5, as well as the
8 relevant statutory provisions."); *In re Alphabet, Inc.*
9 *Securities Litigation*, 1 F.4th 687, (9th Cir. 2021) ("Alphabet's
10 argument that Rule 10b-5(a) and (c) claims cannot overlap with
11 Rule 10b-5(b) statement liability claims is foreclosed by
12 *Lorenzo*, which rejected the petitioner's argument that Rule 10b-
13 5(a) and (c) "concern 'scheme liability claims' and are violated
14 only when conduct other than misstatements is involved.")
15 (internal citations omitted). The first element of scheme
16 liability requires an allegation of sufficient facts to show a
17 defendant "committed a deceptive or manipulative act (or, in
18 light of *Lorenzo*, a misstatement) in furtherance of the alleged
19 scheme." *Borteneau v. Nikola Corp.*, *Simpson v. AOL Time Warner,*
20 *Inc.*, 452 F.3d 1040, 1047 (9th Cir. 2006) (citing *Dura Pharms.*,
21 544 U.S. at 341-42), *vacated on other grounds*, 519 F.3d 1041
22 (9th Cir. 2008). The rest of the elements are identical to a
23 claim under Rule 10b-5(b). *In re Genius Brands Int'l, Inc.*
24 *Securities Litigation*, 97 F.4th 1171, 1180 (9th Cir. 2024).

25 To the extent misstatement liability is plausibly alleged
26 as discussed below, the court holds that the same misstatements
27 that plausibly give rise to an allegation of that liability also
28 plausibly give rise to an allegation that PG&E used those

1 misstatements in a scheme to artificially inflate stock prices
2 and convince claimants to purchase securities at those prices is
3 also plausibly alleged. Because the rest of the elements of
4 scheme liability and misstatement liability are identical, the
5 court addresses those elements in turn below.

6 PG&E argues that the Exchange Act claims under should be
7 rejected for four independent reasons: insufficient pleading of
8 falsity; failure to allege strong inference of scienter; no loss
9 causation; and failure to plead reliance for purchases after
10 October 8, 2017.

11 The Ninth Circuit recently repeated the familiar list of
12 six necessary elements to allege a claim under Exchange Act
13 Section 10(b) and Rule 10b-5(b). *In re Genius Brands Int'l Inc.*
14 *Sec. Litig.*, 97 F.4th 1171, 1180 (Ninth Cir. 2024). This court
15 will follow a shorthand version of that list, and eliminate any
16 discussion of two on that list - purchase and sale of a security
17 and economic loss - as neither has been argued by PG&E here. In
18 short, this court must determine whether, under relevant
19 portions of the Exchange Act, the TAC and/or the RKS Amendment
20 adequately allege that a multitude of statements by PG&E
21 regarding its safety practices were (1) materially misleading;
22 (2) made with scienter; (3) were the cause of the losses
23 suffered by investors; and (4) for those who bought shares after
24 the North Bay Fires, that those statements highlighting renewed
25 and revamped safety efforts were relied on by those purchasers.

26 **A. Falsity**

27 The TAC and RKS Amendment both detail nineteen alleged
28 materially false and misleading statements or omissions by PG&E

1 during the relevant time period, made all the more misleading
2 given the years-long course of conduct by PG&E that led to
3 unsafe fire conditions, and to some of the North Bay fires
4 directly.

5 The first five material statements or omissions relate to
6 PG&E's vegetation management practices and compliance with
7 wildfire safety regulations before the North Bay Fires, namely,
8 that PG&E was meeting or exceeding state and federal safety
9 practices:

- 10 1. On April 29, 2015, during a conference call with
11 investors, then president of PG&E stated that the
12 company "was stepping up our vegetation management
13 activities to mitigate wildfire risk and improve
14 access for firefighters."
- 15 2. On October 16, 2015, PG&E released its 2015 Corporate
16 Responsibility and Sustainability Report that assured
17 investors (and potential investors) its vegetation
18 management practices were "in compliance with
19 relevant laws."
- 20 3. On November 18, 2015, in sworn testimony before the
21 California legislature, a representative of PG&E
22 stated that the company was "just about done"
23 implementing a program to remotely disable recloser
24 devices (which are known ignition dangers in wildfire
25 risk areas)¹⁴ with a focus on high-risk areas, and
26

27 ¹⁴ In brief, reclosers send pulses of electricity to lines that
28 have been downed or shut off as a quick way to re-power the
lines. These recloser pulses are a known wildfire risk when
conditions are too dry. TAC at 169.

1 that most would be taken out of service by the end of
2 the year with the final six reclosers to be taken out
3 of service in 2016.

4 4. On October 6, 2016, PG&E issued its 2016 Corporate
5 Responsibility and Sustainability Report that ensured
6 investors (and potential investors) again that its
7 vegetation management and power line inspection
8 practices complied with relevant laws.

9 5. On August 9, 2017, PG&E issued its 2017 Corporate
10 Responsibility and Sustainability Report that ensured
11 investors (and potential investors) that its
12 vegetation management practices complied with state
13 and federal laws, in particular pruning and removing
14 trees that grow too close to powerlines.

15 The TAC and the RKS Amendment both sufficiently allege that
16 these statements were false by using PG&E's own corrections,
17 including statements made by PG&E on May 25 and June 8, 2019,
18 that disclosed PG&E had violated multiple relevant laws at
19 multiple points in time. The TAC and RKS Amendment further
20 sufficiently allege that Cal Fire found sufficient evidence of
21 PG&E's noncompliance; and that during criminal proceedings (CR-
22 14-0175-WHA (N.D. Cal.) Judge Alsup determined that "as of 2017,
23 there were 3,962 unworked trees PG&E had identified in 2016 as
24 hazardous with the potential" to fall into power lines,
25 conductors, and other PG&E equipment; and that other findings
26 from Judge Alsup and the Butte County DA establish that it was
27 PG&E's inspection failures, and failure to actually complete its
28

1 reclosure disabling program, that substantially contributed to,
2 if not outright caused, the North Bay and Camp Fires.

3 The Omnibus Objections are overruled as to these five
4 misstatements.

5 The next three alleged misstatements or omissions relate to
6 PG&E's announcements that it raised common stock dividends due
7 in large part to PG&E's progress and commitment to its safety
8 programs:

9 6. On May 23, 2016, PG&E issued a press release titled
10 "PG&E Corporation raises Common Stock Dividend,
11 Highlights Progress at Annual Shareholder Meeting."
12 That press release linked the increase to bringing
13 PG&E's dividend in line with other utilities, and
14 touted "continued progress on safety, reliability,
15 and other goals . . . [former PG&E CEO] Earley said,
16 'We've continued to demonstrate leadership and
17 commitment on safety. We're delivering the most
18 reliable service in our company's history.'"

19 7. On November 4, 2016, PG&E hosted a conference call
20 for analysts, during which call an executive stated
21 "the improvements we have made in safety and
22 reliability over the last six years have put us in a
23 position to deliver strong financial results going
24 forward."

25 8. On May 31, 2017, PG&E issued a press release titled
26 "PG&E Corporation Raises Common Stock Dividend,
27 Shareholders Elect Forer Secretary of Homeland
28 Security Jeh C. Johnson to Boards of Directors." In

1 addition to announcing the raised dividend, the
2 release discussed remarks made by the CEO of the
3 company at the annual shareholders meeting that
4 highlighted the company's progress on safety among
5 other goals, and "commitment to safety and
6 operational excellence."

7 As investors, and the public, now know, PG&E had been
8 neglecting safety standards and practices over decades,
9 including the six years leading up to statements made in 2016.
10 PG&E was either not implementing those safety practices as
11 touted, or was potentially willfully ignoring those stated
12 safety practices, while explicitly tying increased share prices
13 to enhanced safety practices in the above statements.

14 These statements are sufficiently plead as misleading, and
15 the Omnibus Objections will be overruled as to these statements.

16 After the North Bay Fires in 2017, PG&E reiterated its
17 compliance with federal and state requirements in five
18 statements:

19 9. On October 31, 2017, PG&E issued a press release
20 titled "Facts About PG&E's Electric Vegetation
21 Management Efforts" that stated "PG&E follows all
22 applicable federal and state vegetation clearance
23 requirements and performs regular power line tree
24 safety activities in accordance with industry
25 standards, guidelines, and acceptable procedures that
26 help to reduce outages or fires caused by trees or
27 other vegetation."
28

- 1 10. On November 2, 2017 in a conference call with
2 analysts, PG&E's current CEO stated that PG&E
3 performed regular tree inspections in accordance with
4 industry standards; that PG&E has "one of, if not,
5 the most comprehensive vegetation management programs
6 in the country;" that "every year, we inspect every
7 segment of the 99,000 miles of overhead line and we
8 clear vegetation as needed;" that wood treatment is
9 performed as needed; that vegetation management work
10 has been expanding since 2014; and that efforts
11 doubled in 2016.
- 12 11. On the same conference call, further assurances to
13 analysts were made that PG&E does patrols of overhead
14 lines at least twice per year and as often as four
15 times per year.
- 16 12. On November 5, 2017, in an article on its public
17 facing website, pgecurrents.com, titled "Facts about
18 PG&E's Wildfire Prevention Safety Efforts," PG&E
19 ensured the public that the utility "meets or exceeds
20 all applicable federal and state vegetation clearance
21 requirements."
- 22 13. On May 25, 2018, in a press release issued in
23 response to Cal Fire reports on the 2017 North Bay
24 Fires, PG&E detailed safety practices and again
25 stated that the utility "meets or exceeds regulatory
26 requirements for pole integrity management" via a
27 comprehensive database and inspection schedule.
28

1 For the reasons outlined above discussing the allegations
2 that contradict PG&E's statements that it increased safety
3 practices and complied with state laws, these statements are
4 sufficiently plead as misleading and the Omnibus Objections to
5 them are overruled.

6 Finally, the last six alleged statements after the North
7 Bay Fires related to compliance with wildfire safety
8 regulations, including PG&E's state-mandated electricity shutoff
9 protocol:

10 14. On June 8, 2018, shortly after Cal Fire announced its
11 conclusions that PG&E caused a preponderance of the
12 North Bay Fires, PG&E issued a press release titled
13 "PG&E Responds to Latest CAL FIRE Announcement"
14 reiterating that "PG&E meets or exceeds regulatory
15 requirements for pole integrity management" and that
16 its Vegetation Management Program was "industry
17 leading[.]"

18 15. The same release also stated that the prior year it
19 launched the Community Wildfire Safety Program "to
20 proactively turn off electric power for safety when
21 extreme fire danger conditions occur."

22 16. On September 27, 2018, PG&E announced on its website
23 and filed with the CPUC its new, legally required
24 ESRB-8 Shutoff Protocol, listing the specific
25 criteria it would use to determine when electricity
26 shutoffs were necessary to prevent wildfires.

27 17. On October 9, 2018, after Cal Fire announced PG&E's
28 fault for causing the Cascade Fire in 2017, PG&E

1 released a press release titled "PG&E Responds to
2 Cascade Wildfire Announcement" reiterating its focus
3 on increasing safety measures "such as working to
4 remove and reduce dangerous vegetation, improving
5 weather forecasting, upgrading emergency response
6 warnings, making lines and poles stronger in high
7 threat areas" among other precautions.

8 18. In the same press release, PG&E again touted its
9 Community Wildfire Safety Program that would
10 proactively shut off electric power in extreme fire
11 conditions.

12 19. On November 9, 2018, the day the Camp Fire started,
13 PG&E announced via its official Twitter.com account
14 at 6:14 a.m. that it "will not proceed with plans
15 today for a Public Safety Power Shutoff in portions
16 of 8 Northern CA counties, as weather conditions did
17 not warrant this safety measure."

18 The statements touching on general safety measures have
19 been discussed above, and the TAC and RKS Amendment allege facts
20 to establish that the Community Safety Program touted in the
21 above statements was subsequently ignored in the exact
22 conditions set forth by PG&E, leading to the Camp Fire. The
23 statements are plausibly alleged as misleading and false.

24 The TAC and RKS Amendment also plausibly allege that none
25 of these statements were true at the time of making them, and
26 PG&E knew this—Judge Alsup called PG&Es' vegetation management
27 practices "dismal" during its criminal proceeding; critical
28 failures that led or contributed to the North Bay fires had not

1 been checked since 2014 or were caused by a nearly 100 year old
2 pole that PG&E noted was in need of replacement in the case of
3 the Camp Fire. Cal Fire and a criminal proceeding found that
4 PG&E did not comply with, but rather violated multiple state
5 regulations, and a PG&E Vegetation Program Manager admitted in
6 April 2017 that the utility had not changed or expanded its
7 vegetation management practices since the Butte Fire took place
8 in 2015.

9 In short, the misleading statements as plead by the TAC and
10 PERA are plausible and pass the threshold for dismissal. PG&E's
11 Omnibus Objections regarding these statements are overruled.

12 The RKS Amendment goes beyond the TAC, adding eight alleged
13 misstatements regarding wildfire safety practices:

- 14 1. On March 2, 2018, PG&E released a YouTube video in
15 which a PG&E arborist touts the company's vegetation
16 management practices and states "since the onset of
17 the drought we've doubled our efforts." The video
18 description states the video was paid for "by PG&E
19 shareholders."
- 20 2. On March 22, 2018, PG&E issued a press release
21 announcing its new Community Wildfire Safety Program,
22 stating that the program will "do more over the long
23 term to harden the electric system to reduce wildfire
24 threats" including by "investing in stronger, coated
25 power lines, spacing lines farther apart to prevent
26 line-on-line contact during windstorms, and replacing
27 wood poles with non-wood poles in the coming years."

1 The statement also touted an augmentation of "already
2 rigorous vegetation management practices."

3 3. On March 27, 2018, PG&E issued a press release
4 touting its "industry-leading Vegetation Management
5 Program, [in which] the company inspects and monitors
6 every PG&E overhead electric transmission and
7 distribution line each year, with some locations
8 patrolled multiple times."

9 4. On May 3, 2018, during a conference call with
10 analysts regarding PG&E's financial outlook for the
11 first quarter of 2018, PG&E's then CEO stated that
12 the company had more than doubled its annual spending
13 for vegetation management and increased frequency of
14 patrols.

15 5. On July 16, 2018, PG&E's Chief Operating Officer
16 Nickolas Stavropoulos stated "over the last seven
17 years, we have accomplished so much together on our
18 journey to become one of the safest, most reliable
19 energy companies in the country. As a team, we've
20 worked to improve our culture, upskill our people
21 and, most importantly, improve public and employee
22 safety."

23 6. On September 27, 2018, in addition to the safety
24 measures alleged by the TAC, PG&E's website and ESRB-
25 8 Shutoff Protocol included the implementation of
26 "[d]isabling [of] automatic reclosing of circuit
27 breakers and reclosers[.]"
28

1 7. On October 1, 2018, PG&E applied to FERC for
2 revisions to its "Transmission Owner Tariff." Part
3 of that application was written testimony from PG&E's
4 Senior Director of Transmission Asset Management
5 stating that "PG&E is currently implementing four
6 mitigations to reduce overhead conductor risk." Those
7 mitigations described in the written testimony
8 included increased insulator and conductor
9 replacement. The testimony also discussed
10 replacement of deteriorated towers.

11 8. On November 5, 2018, just days before the Camp Fire
12 erupted due to PG&E's failure to shut off power in
13 extremely dangerous conditions, during a conference
14 call PG&E's then-CEO again touted its public safety
15 shutoff program as part of a larger comprehensive
16 safety program targeting wildfire areas.

17 The July 26, 2018 statement of Mr. Stavropoulos (No. 5) has
18 no source, there is no context of the statement, whether it was
19 public, widely disseminated, or meant for investors. It also
20 appears to be a general statement of pride at the company
21 striving on a "journey" to become one of the safest energy
22 companies in the country. This lack of sourcing and superlative
23 language places this statement in the realm of general puffery
24 and is not a properly plead as a misrepresentation or false.
25 All other statements, however, are sufficiently plead for all
26 the reasons explained above in relation to other similar alleged
27 misstatements by the TAC and the RKS Amendment.

1 PG&E argues that any of its statements regarding compliance
2 "are reasonably interpreted to mean the PG&E's programs were
3 designed to comply with the law, and not a warranty that at all
4 times PG&E was compliant." Meaning that, PG&E's repeated
5 statements that it met or exceeded state regulations was simply
6 the company expressing an "opinion that it's program was
7 designed to comply with the law," rather than a factual
8 statement of its compliance. PG&E relies heavily on the
9 analysis of *Edison I* and *Omnicare, Inc. v. Laborers Dist.*
10 *Council Cont. Indus. Pension Fund*, 575 U.S. 175 (2015) to then
11 argue that there are more stringent standards of pleading for
12 such opinion statements. Given this more stringent standard of
13 pleading, PG&E argues that almost all the statements relating to
14 safety compliance are improperly plead.

15 The Supreme Court in *Omnicare* distinguishes opinion and
16 fact statements, noting that "[m]ost important, a statement of
17 fact ('the coffee is hot') expresses certainty about a thing,
18 whereas a statement of opinion ('I think the coffee is hot')
19 does not." *Id.* at 183. *Omnicare* stated repeatedly that "we
20 believe we are obeying the law." *Id.* at 186. The Supreme
21 Court held that these were statements of belief on the part of the
22 defendant, meaning that they were statements of opinion and not
23 fact. *Id.*

24 There are no such qualifiers in any of the alleged
25 misrepresentations above (aside from Mr. Stavropoulos'
26 statement, which the court agrees should be stricken). The
27 court disagrees that the statements were that of opinion or that
28 a higher pleading standard must be applied.

1 PG&E has argued that the court should make a statement-by-
2 statement analysis of what they called the False and Misleading
3 Statements Alleged in the TAC: the Camp Fire Allegations; and
4 the False and Misleading Statements Alleged in the RKS
5 Amendment. (Dkt. 14200-1 at 1-12; Dkt. 14203-1, at 1-5). The
6 court will not follow the specific request because it does not
7 consider the PSLRA to be controlling, and because it believes
8 the analysis performed above in grouping like statements is
9 sufficient. That said, it is worth noting that PG&E almost
10 entirely challenges the statements for being insufficiently
11 plead. As noted above, they are not. Statements relating to
12 investor calls, PG&E says, were solely a "general statement of
13 effort, corporate optimism or puffery" which are by law, not
14 misleading and allowable. PG&E's Objection to the October 1,
15 2018 statement relating to the FERC application argues that the
16 statement was not a guarantee of compliance when taken in
17 context with the rest of the statement to FERC; that the
18 statement was not false when made; and that PG&E had no duty to
19 disclose unproven violations.

20 Repeated statements regarding all-important safety
21 practices and standards, considering an alleged reality in which
22 safety measures were continually and willfully underfunded or
23 ignored, are not simply puffery or not misleading when taken in
24 a broader context. PG&E's argument for further context from is,
25 a cry for further discovery and fact-finding to fully flesh out
26 that context, all which must be accomplished after this pleading
27 stage.

1 Except for the statement by Mr. Stavropoulos, all the
2 Omnibus Objections based on the Falsity component of Exchange
3 Act claims are overruled.

4 **B. Scienter**

5 The TAC recounts PG&E' own admissions in its criminal
6 proceedings that it "admitted its actual knowledge from 2015 to
7 2017 that its vegetation management practices did not comply
8 with California safety regulations on the order of thousands of
9 violations per year." TAC at 119. For the purposes of the
10 pleading stage, the court can and will stop here. The PG&E own
11 admitted knowledge that it did not comply with safety
12 regulations is enough to plausibly plead that those statements
13 to the contrary were made with scienter.

14 The RKS Amendment further describes other California
15 utilities disabling reclosers, and PG&E officials telling the
16 California legislature in 2015 that the utility would complete a
17 project to disable reclosers by sometime in 2016. These
18 statements are directly contradicted by a non-disabled recloser
19 being an ignition point of at least one the North Bay Fires in
20 2017. Such statements in the face of the complete opposite
21 actions are enough to plausibly plead that those statements to
22 the contrary were made with scienter.

23 Further, both the TAC and RKS Amendment allege that PG&E's
24 lack of safety compliance was well known within the company,
25 that the CPUC uncovered widescale falsification of safety
26 records, and PG&E's ultimate guilty plea in its criminal case
27 all establish scienter. These assertions are all plausibly
28 alleged at this stage.

1 All the Omnibus Objections based on the Scienter component
2 of Exchange Act claims are overruled.

3 **C. Reliance (for Purchasers after October 17, 2017)**

4 **i. Reliance based on the fraud-on-the-market**
5 **presumption is adequately plead, and rebuttal**
6 **evidence is not appropriate at the dismissal stage.**

7 Both the TAC and the RKS Amendment allege that (1) a
8 rebuttable presumption of reliance is established based on the
9 fraud-on-the-market-doctrine and (2) a presumption of reliance
10 based on PG&E's omissions of fact regarding known safety
11 failures is established. First, the fraud-on-the-market doctrine
12 posits that:

13 "the market price of shares traded on well-developed
14 markets reflects all publicly available information,
15 and, hence, any material misrepresentations. Because
16 the market transmits information to the investor in
17 the processed form of a market price, we can
18 assume . . . that an investor relies on public
19 misstatements whenever he "buys or sells stock at
20 the price set by the market."" *Erica P. John Fund,*
Inc. v. Halliburton Co., 563 U.S. 804, 811 (2011)
(citing *Basic Inc. v. Levinson*, 485 U.S. 224, 246
(1988)) (internal quotations omitted).

21 To establish the presumption, "plaintiffs must demonstrate
22 that the alleged misrepresentations were publicly known (else
23 how would the market take them into account?), that the stock
24 traded in an efficient market, and that the relevant transaction
25 took place between the time the misrepresentations were made and
26 the time the truth was revealed." *Halliburton*, 563 U.S. at 811.

27 Here, the TAC pleads that the statements were made via
28 press releases and investor calls and were thus publicly known;
that the stock traded on the New York Stock Exchange, an

1 unquestionably efficient market; and that the relevant
2 transactions were made during the Class Period of April 29,
3 2015, through November 15, 2018, when the alleged
4 misrepresentations were made, and the truth was revealed.

5 PG&E seeks to rebut this presumption with the truth-on-the-
6 market doctrine. While some courts call this a doctrine and
7 some a defense, the heart of the concept is that "if, despite
8 [defendants'] allegedly fraudulent attempt to manipulate market
9 price, [the truth] credibly entered the market and dissipated
10 the effects of the misstatements, those who traded ... after the
11 corrective statements would have no direct or indirect
12 connection with the fraud." *Basic*, 485 U.S. at 248-49.

13 "However, any material information which insiders fail to
14 disclose must be transmitted to the public with a degree of
15 intensity and credibility sufficient to effectively counter-
16 balance any misleading impression created by the insiders' one-
17 sided representations. Accordingly, the truth-on-the-market
18 defense is intensely fact-specific, so courts rarely dismiss a
19 complaint on this basis." *Brendon v. Allegiant Travel Co.*, 412
20 F.Supp.3d 1244, 1257 (D. Nev. 2019) (citing *In re Apple Computer*
21 *Sec. Lit.*, 886 F.2d 1109, 1115 (9th Cir. 1989); *In re Amgen Inc.*
22 *Sec. Litig.*, 544 F. Supp. 2d 1009, 1025 (C.D. Cal. 2008)
23 (internal citations omitted).

24 PG&E's heavily fact laden rebuttal demonstrates why
25 evaluation of this defense is inappropriate at the dismissal
26 stage and indicates that the parties' presentation and
27 interpretation of facts are so far apart that a court needs to
28 weigh those facts, which is not appropriate at the pleading

1 stage. The TAC and RKS Amendment argue that PG&E's misleading
2 statements and omissions led the investing (and general) public
3 to believe that PG&E had robust and ever-improving safety
4 policies that met or exceeded state standards, and that any
5 fires PG&E was connected to were unfortunate but not caused by
6 PG&E's lack of compliance with the law. The truth that was
7 hidden from that investing public was that PG&E had hidden its
8 subpar and noncompliant safety practices, and that the many
9 fires from 2015 onwards did not ignite despite PG&E's safety
10 practices, but largely because of them. PG&E's rebuttal dodges
11 that distinction, and instead rests on the reporting that the
12 potential for PG&E's financial liability for the North Bay Fires
13 had been known since October 2017.

14 Which doctrine (and underlying theory of the market) will
15 win out is for another day, when this court is able to find and
16 weigh facts. Until then, the Omnibus Objections based on the
17 truth overcoming fraud-on-the-market theory of reliance are
18 overruled.

19 **ii. Reliance based on the Ute Line of Cases is not**
20 **properly plead.**

21 The line of cases borne out of *Affiliated Ute Citizens of*
22 *Utah v. United States*, 406 U.S. 128 (1972) creates a presumption
23 of reliance on a defendant's failure to disclose material facts
24 that it had a duty to disclose. This presumption cuts out the
25 difficulties of the attempts to prove a negative. *Binder v.*
26 *Gillespie*, 184 F.3d 1059, 1063 (9th Cir. 1999). The Ninth
27 Circuit has "held that the presumption should not be applied to
28 cases that allege both misstatements and omissions unless the

1 case can be characterized as one that primarily alleges
2 omissions." *In re Volkswagen "Clean Diesel" Marketing, Sales*
3 *Practices, and Products Liability Litigation*, 2 F.4th 1199, 1204
4 (9th Cir. 2021) (quoting *Binder*, 184 F.3d at 1064) (internal
5 quotations omitted). Courts in the Ninth Circuit must
6 characterize any action invoking this presumption as "primarily
7 a nondisclosure case (which would make the presumption
8 applicable), or a positive misrepresentation case (where the
9 presumption would be unavailable)." *Volkswagen*, 2 F.4th at 1204.

10 As discussed above, the TAC alleges nineteen affirmative
11 misstatements, all of which elide the alleged truth that the
12 safety standards and programs touted by PG&E were not what PG&E
13 made them out to be. Even at the pleading stage, by the TAC's
14 own language, these are misstatements, not omissions. The
15 presumption, afforded one conclusory sentence in the TAC and RKS
16 Amendment (TAC at 142; RKS Amendment at 186), is not
17 sufficiently plead and the presumption is unavailable to
18 claimant. Accordingly, the Omnibus Objections on reliance based
19 on the *Ute* line of cases are sustained.

20 **D. Cause**

21 The TAC alleges nine specific events of market price
22 decline, the first being on October 12, 2017:

23 **1. October 12, 2017**

24 On October 11, 2017, days after the North Bay Fires
25 erupted, the closing price of PG&E shares was **\$69.15**. The next
26 day, on October 12, a litigation letter sent from the CPUC to
27 PG&E directing the company to preserve all evidence of the
28 potential cause of the fires, "includ[ing] all failed poles,

1 conductors, and associated equipment from each fire event" was
2 made public. The letter also directed PG&E to preserve all
3 communications related to "vegetation management, maintenance
4 and/or tree trimming." At the close of the day, PG&E's stock
5 price dropped to **\$64.50**, with unusually heavy trading volume of
6 13 million shares when a typical trading day would involve a
7 volume of around 3.5 million. Even so, at this point the stock
8 remained artificially inflated.

9 The letter, which apparently caused the drop in stock
10 price, is alleged only to be a protective/investigatory letter
11 to PG&E after the devastating fires, but not an indicator either
12 PG&E was indeed the cause of the fires or had been lying to
13 shareholders and the general public regarding safety practices.
14 The affected claimants do not plausibly allege that this price
15 drop is due to the truth regarding any misleading statement by
16 PG&E coming to light. Stated otherwise, there is no allegation
17 that links the price drop to any misleading or false statements
18 by PG&E.

19 Accordingly, the Omnibus Objections as to this price drop
20 are sustained.

21 **2. October 13-16, 2017**

22 PG&E's share price opened at **\$63.95** on October 13, 2017.
23 That day, PG&E filed a form 8-K with the SEC regarding the
24 investigation of the North Bay Fires. In that disclosure form,
25 PG&E stated that Cal Fire is investigating the fires, as well as
26 PG&E's connection to the fires. The disclosure noted PG&E's
27 \$800 million in liability insurance for potential losses and
28

1 that any liability beyond that amount could materially affect
2 business and/or operations.

3 Market analysts regarded the disclosure of previously
4 undisclosed liability insurance as a slow trickle from PG&E that
5 it indeed expected to be held liable, at least in part, for the
6 fires. By the opening of the next trading day on October 16,
7 2017, stock prices had dropped to **\$53.43** per share with
8 unusually heavy trading.

9 The affected claimants plausibly allege that this price
10 drop is associated with the new knowledge that PG&E expected to
11 be held liable for the fires, though at this point the public
12 did not know why PG&E held this expectation.

13 Accordingly, the Omnibus Objections as to this price drop
14 are overruled.

15 **3. December 20, 2017**

16 On this day, PG&E stock was **\$51.12** per share. After the
17 day's trading had closed, PG&E issued a press release stating
18 that it was suspending quarterly dividends on common stock and
19 suspending dividends on preferred stock, given potential
20 liability for the wildfires during an ongoing investigation and
21 noting that under California law, the utility may be held liable
22 for causing the fires even if it had complied with applicable
23 laws. By the following trading day, share prices had fallen to
24 **\$44.50**.

25 This suspension appears to have been made because PG&E
26 recognized potential liability, even if no wrongdoing were to be
27 found, was likely, and there does not appear to be a causal link
28 between the price drop any misleading statements or omissions

1 Accordingly, the Omnibus Objections as to this price drop
2 are sustained.

3 **4. May 25, 2018**

4 On this day, PG&E stock was **\$44.66**. Cal Fire released a
5 report stating there was evidence PG&E was the cause of four
6 North Bay Fires, and that in three of those fires, the cause was
7 PG&E's violation of state regulations regarding vegetation
8 management. The next day, PG&E filed a form 8-K Current Report
9 with the SEC largely quoting from this report. By the end of
10 the **29th**, stock price had fallen to **\$42.34**, which was still
11 over-inflated per the TAC.

12 The TAC plausibly alleges this disclosure and drop in stock
13 price is in direct relation to findings that PG&E both caused
14 fires and violated state law in practices that led to the fires.

15 Accordingly, the Omnibus Objections as to this price drop
16 are overruled.

17 **5. June 8, 2018**

18 On this day, PG&E stock closed at **\$41.45** per share. After
19 the markets had closed, Cal Fire released a report finding PG&E
20 responsible for twelve fires that erupted across Northern
21 California in 2017, due to alleged violations of state law, and
22 due to attempts to re-energize downed power lines, which sparked
23 the fires. The report further stated that the investigation
24 would be turned over to appropriate county district attorneys
25 due to the alleged violations of state law. The next trading
26 day, shares dropped to **\$39.76**.

27 The TAC plausibly alleges the disclosure and drop in stock
28 price is in direct relation to findings that PG&E caused fires

1 and violated state law in practices that led to the fires,
2 including practices of re-energizing utility poles
3 automatically, when previous statements by PG&E that it would
4 have removed all reclosures (that are the mechanism for said
5 pole re-energization) in 2016.

6 Accordingly, the Omnibus Objections as to this price drop
7 are overruled.

8 **6. November 8-9, 2018**

9 Early on November 8, the devastating Camp Fire erupted.
10 PG&E admitted later that day that it did not follow its safety
11 shutoff protocols (those very safety protocols touted to the
12 public and investors earlier in the year). Late in the day,
13 PG&E also filed a report with the CPUC that early that day it
14 had experienced a problem with its Caribou-Palermo high-voltage
15 transmission line on "Pulga Rd. Pulga, Butte County" only
16 fourteen minutes before the Camp Fire began, "in the area of the
17 Camp Fire." The report also acknowledged aerial patrol visuals
18 from that day showed damage to the pole. As the news of the
19 report spread, PG&E shares dropped by the closing of the markets
20 on November 9, 2018, from **\$47.80** per share to **\$39.92**.

21 The TAC plausibly alleges that the market drop was due to
22 PG&E's damaged poles and the fires resulting therefrom and
23 failure to follow safety practices.

24 Accordingly, the Omnibus Objections as to this price drop
25 are overruled.

26 **7. November 9-12, 2018.**

27 As noted above. By the end of November 9, 2018, PG&E stock
28 was **\$39.92** per share. As the Camp Fire continued to burn across
Paradise, CA, reports emerged that PG&E knew the pole that may

1 have caused the fire was "sparking" and still did not shut off
2 power to that line. Upon the spread of the fire, and of the
3 reporting on the sparking pole, at the end of November 12, the
4 stock was trading at **\$32.98** per share.

5 The TAC plausibly alleges that the market drop was due to
6 PG&E's knowingly damaged poles and failure to follow safety
7 practices considering that knowledge.

8 Accordingly, the Omnibus Objections as to this price drop
9 are overruled.

10 **8. November 13-14, 2018**

11 As noted above, by November 13 PG&E stock was trading
12 around **\$32.98** per share. Then, PG&E released an updated SEC
13 filing admitted that its revolving credit facilities were tapped
14 and, if found liable for the Camp fire, its liability would
15 outstrip its insurance coverage. By the end of November 14,
16 stock prices fell to **\$25.59** per share.

17 It appears that this market adjustment comes from a
18 statement on finances, and not in relation to any revealed
19 wrongdoing of PG&E. The TAC does not plausibly allege that this
20 price drop was due to a market reaction to PG&E's newly revealed
21 wrongdoing.

22 Accordingly, the Omnibus Objections as to this price drop
23 are sustained.

24 **9. November 15, 2018**

25 On this day Cal Fire announced it had identified a second
26 ignition point of the Camp Fire that was also likely PG&E's
27 responsibility. PG&E's stock closed at **\$17.74** that day.

28 The TAC plausibly alleges that the market drop was due to
news that PG&E was likely responsible for not just one, but two
ignition points of the Camp Fire.

1 Accordingly, the Omnibus Objections as to this price drop
2 are overruled.

3 PG&E argues the TAC does not establish loss causation, as
4 the burden was on PERA to "to allege that the market learned and
5 reacted to those [false statements and omissions] themselves.
6 This reaction, in turn, must be the cause of a plaintiff's
7 loss." (internal citations omitted). PG&E goes on to state that
8 none of the successive disclosures show that the market "learned
9 and reacted to the 'very facts' allegedly misrepresented in any
10 of the challenged statements."

11 Very generally, first and third price drops as plead,
12 markets were reacting to the fires themselves and disclosures of
13 previously available information, and not disclosures of
14 previously hidden or unrelated information. From the fourth
15 price drop onward (excepting the eighth drop, which was an
16 acknowledgment of financial precarity alone), the TAC plausibly
17 alleges that the price drops were connected to disclosures of
18 previously hidden information or information that contradicted
19 PG&E's own previous statements regarding safety practices and
20 state law compliance.

21 Accordingly, aside from objections to one alleged
22 misleading statement and price drops that are sustained as
23 explained above, the Omnibus Objections to the TAC and RKS
24 Amendment's Section 10(b) and Section 20(a) claims (which are
25 entirely derivative of the 10(b) claims) and the RKS'
26 Amendment's Section 10(a)-(c) claim under the Exchange Act are
27 overruled.
28

1 **VI. MERITS - COMPONENTS OF SECURITIES ACT CLAIMS**

2 Section 11 of the Securities Act prohibits the publication
3 of registration statements that "contain[] an untrue statement
4 of a material fact or omit[] to state a material fact required
5 to be stated therein or necessary to make the statements therein
6 not misleading." 15 U.S.C. § 77k(a). Section 15 of the
7 Securities Act allows for control person liability—that is, any
8 person or entity who controls an entity liable under Section 11
9 of the Securities Act, is liable to the same extent as the
10 entity it controls. 15 U.S.C. § 77o. As Section 15 liability is
11 ultimately dependent on findings of Section 11 liability, the
12 court only focuses on Section 11. A plaintiff seeking relief
13 under Section 11 of the Securities Act must have "purchased
14 shares traceable to the allegedly defective registration
15 statement." *Slack Technologies LLC v. Pirani*, 598 U.S. 759, 770
16 (2023), and that the registration statement contained materially
17 misleading statements or omissions. 15 U.S.C. § 77k(a). The
18 Securities Act is "narrower" than the Exchange Act and focused
19 "primarily on the regulation of new offerings." *Id* at 762
20 (internal quotations and citations omitted).

21 Because a successful Section 11 claim largely depends on
22 the misrepresentations of specific offerings, it is important to
23 remember that the specific offerings are from March 2016 (Notes
24 Offering); December 2016 (Notes Offering); March 2017 (Notes
25 Offering); and April 2018 (Exchange Offering, specifically an
26 offer to exchange restricted notes from an unrelated private
27 placement in 2017 for equivalent publicly traded notes).

28 PG&E's challenge to the Securities Act claims set forth
various separate grounds for sustaining them. The court has

1 already discussed PG&E's arguments regarding the statute of
2 limitations and release of certain bond issues above. The court
3 addresses the remaining components of the claims so challenged
4 below.

5 **A. Falsity**

6 As a gating issue, PG&E insists, as with the Exchange Act
7 claims, that the Section 11 claims are subject to the heightened
8 pleading standards of Rule 9(b) because the alleged false and
9 misleading statements sound in fraud. The court disagrees:

10 Whether Rule 8(a) or 9(b) is triggered turns on
11 the type of claim alleged (i.e., the cause of
12 action) rather than the factual allegations on
13 which that claim is based. . . . Rule 9(b) only
14 applies to claims that fall under the category of
15 fraud or mistake. Because a Section 11 claim is
not a fraud claim, Rule 8(a) applies. That the
same factual allegations also give rise to a Rule
10b-5 claim is irrelevant to this analysis.

16 *In re Initial Pub. Offering Sec. Lit.*, 241 F.Supp 2d 281, 341-42
17 (S.D.N.Y. 2003).

18 Exhibit A of the TAC lists the alleged thirty-four false
19 and misleading statements (and inferences of omissions) embedded
20 in the Offering Documents upon which the Section 11 claims are
21 based. The TAC bases its Section 11 claims on negligence, not
22 fraud, and asserts that the statements regarding safety
23 practices were false at the time when made and omitted that any
24 increase in spending on such practices was dangerously
25 inadequate due to PG&E's long-term neglect of such practices.

26 The RKS Amendment includes the same alleged false and
27 misleading statements and inferences of omissions embedded in
28 the Offering Documents. Like the TAC, the RKS Amendment

1 emphasizes, as will be discussed below, that the statements in
2 the Offering Documents were misleading because the potential
3 risks to investors identified in the Offering Documents had
4 already materialized. Because the same alleged misstatements
5 are asserted by both the TAC and RKS Amendment, references to
6 the TAC or related documents should also be taken to reference
7 the RKS Amendment and related documents.¹⁵

8 PG&E argues that statements concerning investment in its
9 wildfire safety programs were not false and thus not actionable;
10 that investors knew the risk of wildfires and the Offering
11 Documents themselves referenced the Butte Fire as an example of
12 wildfire risk; and that allegations that the Offering Documents
13 were misleading because they did not disclose that PG&E's safety
14 practices had already increased the risk of wildfires, are
15 premised entirely on conclusions not reached until after late
16 2018 and 2019, meaning that the TAC fails to allege facts to
17 show the disclosures were false when made. PG&E also argues
18 that the Offering Documents incorporate by reference various 10-
19 Q statements filed with the SEC that do describe real-time
20 findings that PG&E caused certain fires, and its mounting
21 liabilities due to those fires—meaning that there can be no
22 misleading statements when there are documents available to
23 investors that did reveal the truth.¹⁶

24
25 ¹⁵ The court declines to restate each alleged misstatement, and
26 notes PG&E declined to engage in such an analysis as well.

27 ¹⁶ The entirety of the 10-Q statements, among other documents are
28 found in PG&E's voluminous Request for Judicial Notice (RJN)
(Dkt. 14208). PERA and RKS object to the RJN for a variety of
reasons (Dkts. 14343 and 14353, respectively), namely that the
documents in the RJN reach beyond the four corners of the

1 As for statements emphasizing increases in vegetation
2 management and other safety practices, the Securities
3 Plaintiffs' Opposition explains those statements "were
4 verifiably inconsistent with and contradicted by material
5 adverse facts that existed at the time . . ." (Dkt. 14342 at 74;
6 see also RKS Amendment at 115). For example, internal emails
7 from 2014 noted "the likelihood of failed structures [on the
8 power line that caused the Camp Fire] happening is high,"
9 because the Company never replaced those structures. The court
10 agrees that such statements created an impression that was
11 inconsistent with real-time information. See *In re Quality Sys.*
12 *Inc. Sec. Litig.*, 865 F.3d 1130 (9th Cir. 2017) (finding that
13 statements from officers that were inconsistent with real-time
14 financial information was materially false or misleading).
15 This, along with pleadings in the TAC alleging that PG&E had
16 allowed its vegetation management budget to "wither" and
17 promoted financial incentives for field workers that discouraged
18 active vegetation management, there is enough inconsistency
19 alleged between the Notes Offerings real-time information that
20 the statements are plausibly alleged as misleading.

21 Regarding the Offerings Documents' reference to the Butte
22 Fire as an example of wildfire risk already known to investors,
23 the reference was one parenthetical example of risks that could
24 impact future financial results of the offered notes, that also
25 included drought, climate change, natural disasters, acts of
26 _____
27 complaints underlying the claims and thus should not be
28 considered at the dismissal stage. The court agrees with PG&E
that the documents contained in the RJN are properly considered
at the pleading stage, as the TAC and RKS Amendment necessarily
reference such documents.

1 terrorism, war, and vandalism (TAC, Ex. 1). This rebuttal from
2 PG&E obfuscates the thrust of the TAC. The issue is not that
3 wildfires out of anyone's control ignited. The allegation is
4 that it was PG&E's practices that increased the risk of, or was
5 the cause of, such fires. Whether the merits of the allegations
6 bear out is a question for later, but the allegation itself is
7 plausible.

8 PG&E argues that certain statements inadequately plead
9 falsity because the falsity or misleading nature of the
10 statements were "premised entirely on conclusions reached in
11 December 2018 and later in 2019." The situation is akin to *In*
12 *re Facebook, Inc. Sec. Litig.*, 87 F.4th 934, 949-50. In
13 *Facebook*, the Ninth Circuit concluded that plaintiffs had
14 adequately plead that Facebook's risk statements regarding third
15 party security breaches in its notes offerings were false or
16 misleading. *Id.* In reaching this conclusion, the Ninth Circuit
17 stated: "Facebook's statement was plausibly materially
18 misleading even if Facebook did not yet know the extent of the
19 reputational harm it would suffer as a result of the breach:
20 Because Facebook presented the prospect of a breach as purely
21 hypothetical when it had already occurred, such a statement
22 could be misleading even if the magnitude of the ensuing harm
23 was still unknown." *Id.* Here, the risk was PG&E's diminished
24 safety practices already increasing the risk of (and causing)
25 wildfires. The statements are alleged to be misleading because
26 the Offering Documents present this risk as a hypothetical, when
27 PG&E knew at the time the risk had already arisen.

1 Regarding PG&E's argument that the Offering Documents'
2 incorporation by reference of various 10-Q statements that went
3 into more detail about PG&E's past actions and liabilities, the
4 10-Q statements appear to contradict, as opposed to supplement
5 the Offering Documents as presented. Where the Offering
6 Documents present potential risks, the 10-Q statements discuss
7 realities. Whether this incongruence between the 10-Q filings
8 and the rest of the Offering Documents weighs in favor of PG&E
9 or the claimants is appropriately decided at a later stage of
10 litigation. As of now, especially considering such incongruity,
11 the statements of the Offering Documents are plausibly alleged
12 as misleading for the reasons outline above.

13 Accordingly, the TAC and RKS Amendment plausibly allege
14 that the Offering Documents contained misleading statements and
15 omissions.

16 For similar reasons, allegations that PG&E violated
17 Regulation S-K under the Securities Act are plausibly alleged.
18 These SEC Rules require notes issuers to disclose "known trends
19 and uncertainties," 17 C.F.R. § 229.303(a)(3)(i)-(ii) (currently
20 § 229.303(b)(2)(ii)) and within its own caption titled "'Risk
21 Factors' [provide] a discussion of the material factors that
22 make an investment in the registrant or offering speculative or
23 risky." 17 C.F.R. § 229.105(a). PG&E may have disclosed the
24 trend of climate change and increasingly dry conditions, but not
25 the trend of prolonged lack of investment in safety, which the
26 TAC plausibly alleges was a known practice by PG&E over many
27 years leading up to the proposed Class Period in the TAC which
28

1 could have made the offerings more speculative or risky than
2 initially disclosed.

3 Accordingly, the Omnibus Objections regarding falsity in
4 the Offering Documents under various portions of the Securities
5 Act are overruled.

6 **B. Reliance by Certain Claimants**

7 PG&E argues that certain claimants, whom PG&E terms "after-
8 market purchasers", fail to plead reliance as required of such
9 purchasers, citing 15 U.S.C. 77k(a); *In re Metro.Sec. Litig.*,
10 532 F.Supp.2d 1260 (E.D. Wash. 2007); *Lee v. Ernst & Young, LLP*,
11 294 F.3d 969, 977 (8th Cir. 2002) (explaining that alleging
12 reliance is "a requirement for certain aftermarket purchasers").

13 Establishing reliance is a requirement for plaintiffs who
14 purchased the security in question "after the issuer has made
15 generally available to its security holders an earning statement
16 covering a period of at least twelve months beginning after the
17 effective date of the registration statement." 15 U.S.C. 77k(a).
18 The affected claimants argue that "Rule 8 does not require
19 plaintiffs to plead the elements of a claim" including reliance,
20 *In re Initial Pub. Offering Sec. Litig.*, 241 F. Supp. 2d 281,
21 342. Thus, the element of reliance is not gating at the
22 pleading stage in this case. When reliance must be proven, the
23 affected claimants will need to do so through legitimate
24 inferences of reliance on the face of the TAC. In other words,
25 the TAC argues that the issue of reliance is a matter of proof
26 they must sustain, not a burden of pleading at this point, and
27 is thus not an issue to be decided at this time.
28

1 Likewise, RKS Claimants argue that 75% of its purchasers
2 have no statutory requirement of reliance at all, as the Notes
3 purchases were made within twelve months of the Notes Offerings.
4 Because PG&E's challenge as to reliance applies only to a small
5 subset of RKS Claimants, RKS argues this issue of reliance
6 should be disposed of on a claimant-by-claimant basis after
7 discovery has been completed.

8 The court agrees with the Securities Act Claimants and RKS.
9 Given the omnibus nature of the objections process that was
10 proposed by PG&E and the very few claimants that must prove
11 reliance, "this is precisely the kind of issue that lends itself
12 to a full claimant by claimant factual record before
13 disposition." (RKS Amendment, Dkt. 14353 at 85). Further, the
14 court cannot penalize the affected claimants for not pleading an
15 element that is not required by Fed. R. Civ. P. 8.

16 Accordingly, PG&E's attempt to eliminate certain claimants
17 for failure to plead reliance fails and the Omnibus Objections
18 based on failure to plead reliance are overruled. Those
19 claimants who must prove reliance as to their claims may do so
20 as a part of their proof at trial or on any dispositive pre-
21 trial motion.

22 **C. Claims Based on the 2018 Exchange Offering**

23 As noted above, the April 2018 Offering was an Exchange
24 Offering, exchanging restricted private notes for public notes.
25 PG&E argues that because the basis of exchange was for private
26 notes, and Section 11 liability is not available for private
27 offerings, claims based on the 2018 Exchange Offering fail as a
28 matter of law. See *In re Levi Strauss & Co. Sec. Litig.*, 527

1 F.Supp. 2d 965, 975 (N.D. Cal. 2007). "Because the unregistered
2 bondholders had already invested in [unregistered] bonds through
3 the [private] offerings, they were not presented with the
4 decision of whether or not to purchase [registered] bonds
5 pursuant to the registration statement." *Id.* at 978.

6 The affected claimants argue that simply because a claimant
7 Plaintiff participated in an exchange of previously purchased
8 private notes for public notes in an Exchange Offering does not
9 negate standing to bring a claim relating to misleading
10 statements in the registration documents for that Exchange
11 Offering. *See Hildes v. Arthur Andersen LLP*, 734 F.3d 854, 862
12 (9th Cir. 2013) (plaintiff has standing if "misrepresentations
13 contained in the Registration Statement played a role in the
14 causal chain that resulted in the exchange of stock"). This
15 court will follow the more recently articulated and binding
16 precedent of Ninth Circuit as articulated in *Hildes*.

17 Accordingly, PG&E's attempt to eliminate claims based on
18 the 2018 Exchange Offering fails and the Omnibus Objections
19 based on this theory are overruled.

20 **D. Doctrine of "Negative Causation"**

21 PG&E alleges the doctrine of "negative causation" negates
22 any statutory damages that may be available to the affected
23 claimants meaning no economic loss can be established. The
24 doctrine of negative causation limits statutory damages if the
25 defendant proves the depreciation of the security in question
26 arose from something other than the alleged misstatement or
27 omission. "The burden to prove negative loss causation is
28 heavy." *See, e.g. Fed. Hous. Fin. Agency v. Monura Holding Am.,*

1 Inc., 873 F.3d 85, 153 (2nd Cir. 2017). It is thus not
2 appropriate to evaluate an affirmative defense regarding loss
3 causation at the pleading stage, and the court will not do so
4 until the appropriate stage of litigation.

5 Accordingly, PG&E's Omnibus Objections based on failure to
6 sufficiently plead economic loss due are overruled.

7 **E. Statutory Damages**

8 Damages for Section 11 claims are calculated in one of
9 three ways, "the difference between the amount paid for the
10 security (not exceeding the price at which the security was
11 offered to the public)" and either (1) the value of the security
12 at the time of filing suit; (2) the value the security was
13 disposed of before filing suit; (3) or the amount the security
14 was disposed of after filing suit but before judgment was
15 rendered (with caveats). 15 U.S.C. § 77k(e).

16 PG&E argues that while at the time of filing, there was a
17 temporary dip in securities values, the notes at issue have
18 since either been paid in full or were reinstated, meaning that
19 the value of the notes has not changed and there are no
20 statutory damages to be had.

21 The affected claimants argue damages are a remedy, not an
22 element of the cause of action, and that the question of damages
23 is so fact-intensive that it is not an appropriate question at
24 the pleading stage. See *In re Countrywide Fin. Corp. Sec.*
25 *Litig.*, 588 F.Supp. 2d 1132, 1169 (C.D. Cal. 2008) ("So long as
26 the other allegations in the complaint (and matters of which a
27 court may take judicial notice) do not conclusively demonstrate
28 that plaintiffs cannot prove a loss, the complaint survives a

1 motion to dismiss. The statute, the Ninth Circuit, and the
2 Supreme Court do not require more."). The court agrees with
3 this rebuttal. While it may be that they cannot prove a loss in
4 the face of confounding factors of price drops, and PG&E has not
5 conclusively demonstrated that a loss cannot be proven. This is
6 a fact-finding issue not appropriate for the pleading stage.

7 Accordingly, the Omnibus Objections based on failure to
8 plead damages or loss are overruled.

9 **VII. CONCLUSION**

10 For the foregoing reasons, the 33rd Omnibus Objection and
11 the 34th Omnibus Objection are OVERRULED IN PART AND SUSTAINED
12 IN PART. Promptly after the issuance of this Memorandum
13 Decision, the court will issue specific orders disposing of
14 those Omnibus Objections for the reasons stated here.

15 The court will conduct a status conference on these matters
16 on **October 22, 2024 at 10:00 AM**. The purpose of that conference
17 will be to discuss with counsel the further conduct of the
18 remaining securities fraud claims asserted by PERA and RKS.
19 Prior to that time, counsel should meet and confer to discuss
20 such matters as discovery, motions, whether any mediation
21 efforts should be coordinated with the mediation the district
22 court has ordered and other matters as appropriate.

23 One week prior to the status conference, the parties should
24 submit updated reports concerning unresolved claims filed in
25 their respective June 21, 2024, submissions (Dkts. 14497, 14499,
26 and 14500).

27 ****END OF MEMORANDUM DECISION****

Partial Glossary of Defined Terms

Defined Term	Definition
Alleged Relevant Period	April 29, 2015, through November 15, 2018
District Court Action	<i>In re PG&E Corporation Securities Litigation</i> , No. 5:18-cv-03509 (N.D. Cal.)
<i>Edison I</i>	<i>Barnes v. Edison Int'l</i> , No. CV 18-09690 CBM, 2021 WL 2325060 (C.D. Cal. Apr. 27, 2021)
<i>Edison II</i>	<i>Barnes v. Edison Int'l</i> , No. 21-55589, 2022 WL 822191 (9th Cir. 2022)
Exchange Act	Securities Act of 1934, 15 U.S.C. § 78a <i>et seq.</i>
Exchange Offer	PG&E's April 2018 exchange offer
FAC	Consolidated Class Action Complaint for Violation of the Federal Securities Laws filed by PERA in the District Court Action on November 9, 2018
Mid-Jersey	Mid-Jersey Trucking & Local 701 Pension Fund
Notes Offerings	PG&E's note offerings in March 2016, December 2016, and March 2017
Offering Documents	Registration statements, prospectuses and prospectus supplements filed with the SEC in connection with the Notes Offerings and Exchange Offer
PERA	Public Employees Retirement Association of New Mexico
PG&E	PG&E Corporation and Pacific Gas and Electric Company (the "Utility") are referred to as "PG&E" solely for purposes of the Objections
Plan	Joint Chapter 11 Plan of Reorganization
PSLRA	Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4
RKS	The law firm of Rolnick Kramer Sadighi LLP
RKS Amendment or RKS Am.	The Amended Statement of Claim on Behalf of the RKS Claimants
RKS Claimants	Claimants represented by RKS in this matter, and also any non-RKS-represented claimants that adopted, in whole or in part, the allegations in the RKS Amendment
SAC	Second Amended Consolidated Class Action Complaint for Violation of the Federal Securities Laws filed by PERA in the District Court Action on December 14, 2018

Securities Act	Securities Act of 1933, 15 U.S.C. § 77a <i>et seq.</i>
Securities Act Plaintiffs	County of York Retirement Fund, City of Warren Police and Fire Retirement System, and Mid-Jersey Trucking & Local 701 Pension Fund
TAC	Third Amended Complaint filed by PERA and the Securities Act Plaintiffs in the District Court Action, attached as Exhibit 92 to the accompanying Request for Judicial Notice
Warren	City of Warren Police and Fire Retirement System
York	County of York Retirement Fund

MEMORANDUM DECISION - EXHIBIT A - EXCERPTS FROM PLAN

4.32 Class 10B - Utility Subordinated Debt Claims.

(a) Treatment: In full and final satisfaction, settlement, release, and discharge of any Utility Subordinated Debt Claim, except to the extent that the PG&E or the Reorganized PG&E, as applicable, and a holder of an Allowed Utility Subordinated Debt Claim agree to a less favorable treatment of such Claim, on the Effective Date or as soon as reasonably practicable thereafter, each holder of an Allowed Utility Subordinated Debt Claim shall receive Cash in an amount equal to such holder's Allowed Utility Subordinated Debt Claim.

(b) Impairment and Voting: The Utility Subordinated Debt Claims are Unimpaired, and the holders of Utility Subordinated Debt Claims are presumed to have accepted the Plan.

4.14 Class 10A-II - HoldCo Rescission or Damage Claims.

(a) Treatment: In full and final satisfaction, settlement, release, and discharge of any HoldCo Rescission or Damage Claim, except to the extent that the PG&E or the Reorganized PG&E, as applicable, and a holder of an Allowed HoldCo Rescission or Damage Claim agree to a less favorable treatment of such Claim, on the Effective Date or as soon as reasonably practicable thereafter but in no event later than thirty (30) days after the later to occur of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim, each holder of an Allowed HoldCo Rescission or Damage Claim shall receive a number of shares of New HoldCo Common Stock equal to such holder's HoldCo Rescission or Damage Claim Share.

(b) Impairment and Voting: The HoldCo Rescission or Damage Claims are Impaired, and the holders of HoldCo Rescission or Damage Claims are entitled to vote to accept or reject the Plan.

4.12 Class 9A - HoldCo Subordinated Debt Claims.

(a) Treatment: In full and final satisfaction, settlement, release, and discharge of any HoldCo Subordinated Debt Claim, except to the extent that the PG&E or the Reorganized PG&E, as applicable, and a holder of an Allowed HoldCo Subordinated Debt Claim agree to a less favorable treatment of such Claim, on the Effective Date or as soon as reasonably practicable thereafter, each holder of an Allowed HoldCo

Subordinated Debt Claim shall receive Cash in an amount equal to such holder's Allowed HoldCo Subordinated Debt Claim.

(b) Impairment and Voting: The HoldCo Subordinated Debt Claims are Unimpaired, and the holders of HoldCo Subordinated Debt Claims are presumed to have accepted the Plan.